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On June 2, 2006By: Conrad O. Gardner**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Conrad O. Gardner

Group Art Unit: 3611

Application No.: 08/896,514

Examiner: Daniel Yeagley

Filing Date: 06/23/97

Docket No.: 95-004 M

Date: June 1, 2006

**For: EXTENDED RANGE MOTOR VEHICLE HAVING AMBIENT POLLUTION
PROCESSING**

**Attention: Board of Patent Appeals and Interferences
Assistant Commissioner for Patents
Alexandria, Va. 22313-1450**

REPLY BRIEF

Sir:

This REPLY BRIEF is being filed within the two month period for such response.

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Claims 55 and 59 are clearly unobvious over Lynch in view of nickel-cadmium batteries.

The Examiner argues that it is obvious to substitute a fast charge-discharge battery in Lynch since fast charge-discharge batteries were known at the time of the invention.

The existence and non-use of the fast charge-discharge battery in a field with a great deal of R&D is proof that the use of such a battery in the automotive field was not contemplated until disclosed by applicant and which use was followed by others much later in time. This is confirmed by the affidavit of Philip C. Maite and must be considered in view of *In re Moore* (Evidence appendix at page 15 of applicants Brief).

The Examiner's entire concern with the Affidavit appears on page 5 of the Examiner's Answer under (10) Response to Argument stating that the Affidavit of Philip C. Maite merely presents the "bad side of the coin" The Examiner must realize that the arts are replete with early pioneering inventions that had some drawbacks and were not used later, e.g. electrostatic images were first developed using cat's fur. Further, the battery definition in Lynch referred to by the Examiner defines lead acid starter batteries but fails to define a fast charge-discharge battery such as nickel cadmium having entirely different characteristics as defined in applicant's specification and utilized in applicant's method claims 55 and 59 in operation of a hybrid vehicle.

The Examiner's Answer states that "As such, Lynch's vehicle captures power from a continuously running low horsepower engine (See column 9, lines 7-8) without loss of power to the vehicle, as called for in step a of claim 55, and transfers power output from the engine into electric power conserved in the battery, as recited in step b of claim 59. The method steps of claims 55 and 59 in contrast are concerned with and claim rapid capture of power and transfer of power leading to charging speeds and consequent efficiencies not possible with lead acid starter batteries of Lynch.

A first paragraph on page 4 of the Examiner's Answer relates to up and down hill operation in the Lynch system to maintain preferred speed. It is noted further that the response of the system is so smooth that the operator notices no change. This excerpt is quoted with respect to applicant's claims 55 and 59 relating to throttle operation. Throttle operation in Lynch is connected via an electric servo valve to vary the hydraulic flow in the transmission which changes the speed of the vehicle (col.4, lines 53 on).

No motivation exists for one of ordinary skill in the art to use nickel cadmium batteries in Lynch for the reasons given in Sections I through V of applicant's BRIEF. Further, as Lynch points out (at column 2 in the paragraph beginning at line 27), motivation existed and efforts in hybrid art systems design were directed to maintaining the internal combustion engine at nearly constant power level and to control transfer of power between engine and motor generator to which problem the solution of Lynch is directed, not battery source since banks of automotive starting batteries as required were satisfactory (col.5, lines 16 on).

Regarding applicant's DECLARATION concerning "Pioneer Status", the Examiner states that such statements "are not deemed persuasive in any respect". It is believed that this is not the case since all the evidence must be considered as a whole.

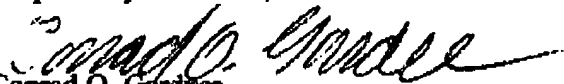
Further, the definition of "Pioneer Patent" has been defined by authorities by reference to *Westinghouse v. Boyden Power Brake Company* (cited at page 11 of applicant's BRIEF)

and proof of such in terms of citations accompanied the DECLARATION. Applicant has not stated that the DECLARATION re "Pioneer Status is "overwhelming evidence of such" as stated by the Examiner (at page 6, last paragraph of the Examiner's Answer).

CONCLUSION

For the above reasons, it is believed that the rejections of claims 55 and 59 should be reversed.

Respectfully submitted,



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